

**Commonwealth of Massachusetts - Department of Environmental Protection
Drinking Water State Revolving Fund Program**

Policy on Eligible Project Costs

Purpose

This document establishes MassDEP's guidelines for determining the eligible project costs of drinking water projects financed through the Drinking Water State Revolving Fund Program (DWSRF).

Applicability

This Guidance is intended for use by SRF loan applicants and their consultants in the preparation of applications for DWSRF funding, and by MassDEP SRF Program staff in reviewing loan applications.

Users of this guidance are strongly encouraged to review the regulatory provisions contained in 310 CMR 45.04 which address the types of projects eligible for financing through the DWSRF. These provisions are attached to this guidance as Appendix 1. The regulatory provisions pertaining to eligible project costs are contained in 310 CMR 45.07, a copy of which is attached as Appendix 2.

Applicants should also refer to the relevant Intended Use Plan (IUP) on which their project appears, since the annual IUP may limit which stages of project implementation (i.e., planning, design, or construction) are eligible for that fiscal year. For projects on the Calendar 2013 IUP, design stage costs and design projects are not eligible for assistance.

I. Introduction

This policy summarizes how MassDEP distinguishes *eligible costs* (those necessary for the completion of a drinking water project) from *ineligible costs* (those which are not necessary for the completion of the project.) The guidance is provided primarily in the form of examples and includes separate listings for eligible and ineligible costs. Eligible borrowers should contact MassDEP for further guidance concerning any other categories of costs not clearly appearing on either list. In general, in addition to being **necessary**, eligible costs must be (a) **reasonable**, (b) **allocable** to the project, (c) **not a general expense** of carrying out the overall responsibilities of the eligible borrower or LGU, and (d) **not funded** under another state or federal financial assistance program.

MassDEP determines eligible costs of each project on a case-by-case after reviewing the eligible borrower's loan application. This determination is incorporated within the Project Approval Certificate. Issuance of the Project Approval Certificate is contingent upon an applicant satisfying the criteria and procedures set forth in the DWSRF program regulations, 310 CMR 45.00.

II. Eligible Costs

The eligible costs in this guideline are divided into project phases and categories and include the Planning phase, the Design phase, the Construction phase, a Miscellaneous and an Administrative category.

A. Planning Phase Eligible Costs

The costs of preparing a Project Evaluation Reports (PER) (310 CMR 45.08) directly related to the drinking water project are eligible costs and include but are not limited to:

1. The costs of professional and consulting services including necessary travel to meet project objectives.
2. The costs incurred in complying with the requirements of the National Environmental Policy Act (NEPA) and the Massachusetts Environmental Policy Act (MEPA).
3. Pilot studies.

B. Design Phase Eligible Costs [NOT AVAILABLE FOR CY 2013 IUP PROJECTS]

The costs for preparation of construction drawings, specifications, pre-design reports, estimates, and construction contract documents related to the drinking water projects are eligible costs and include but are not limited to:

1. The costs of professional and consulting services including necessary travel to meet project objectives.
2. The costs of survey and borings.

C. Construction Phase Eligible Costs

The costs of construction and related activities necessary to build the drinking water project are eligible costs and include but are not be limited to:

1. The costs of professional and consulting services including necessary travel to meet project objectives.
2. The construction contract including a 5 % construction contingency
3. Costs of start-up services for on-site training of operating personnel in operation and control of specific treatment processes, laboratory procedures, and maintenance and records management.
4. The cost of an operation and maintenance (O & M) manual or revisions to an existing O & M manual for drinking water treatment facilities.
5. The cost for post construction certification.
6. Cost of acquiring all or part of an existing publicly or privately owned drinking water project provided all the following criteria are met:
 - a) The acquisition, in and of itself, considered apart from any upgrade, expansion or rehabilitation, provides new drinking water benefits;
 - b) The acquired drinking water project was not built with previous federal or state financial assistance;

- c) The primary purpose of the acquisition is not the reduction, elimination, or redistribution of public or private debt; and
 - d) The acquisition does not circumvent the requirements of 310 CMR 45.00, or other state or local requirements.
7. Cost of a reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations and laboratory equipment necessary to conduct tests required for plant operation.
 8. Cost of permanently fixed shop equipment (i.e., lathes, drill press other power shop equipment) installed at the drinking water plant necessary for the operation of the works.
 9. Costs of necessary safety equipment to be used exclusively at the drinking water facility, provided the equipment meets applicable federal, state, local or industry safety requirements.
 10. Costs of a reasonable inventory of necessary maintenance equipment (such as lawn mowers, snow blowers, and power and shop tools) and customary furniture and office equipment for new treatment works, provided these purchases are to be used exclusively for that treatment facility. These purchases should receive prior MassDEP approval, be appropriate for the facility's size and usage and should be limited in cost.
 11. Computers and ancillary software necessary for efficient operation of the drinking water facility.
 12. Costs of royalties for the use of or rights in a patented drinking water process or product.
 13. Costs allocable to the drinking water treatment purpose of multiple purpose projects.
 14. Costs necessary to mitigate direct, adverse, physical impacts resulting from building drinking water facilities.
 15. Change orders and the costs of meritorious contractor claims for increased costs under subagreements provided the costs are within the scope of the project, not caused by the owner's mismanagement; and not caused by the owner's vicarious liability for the improper actions of others. Eligible costs include:
 - a) Building costs resulting from defects in the plans, design drawings and specifications, or other subagreement documents only to the extent that the costs would have been incurred if the subagreement documents had been free of defects, and excluding the costs of any rework, delay, acceleration, or disruption caused by such defects.
 - b) Costs of equitable adjustments for differing site conditions.

Settlements, arbitration awards, and court judgments which resolve contractor claims shall be eligible only to the extent that they meet the requirements of 310 CMR 45.00, are reasonable, and do not attempt to pass on to the state the cost of events that were the responsibility of the owner, the contractor, or others.
 16. The costs (including legal, technical, and administrative costs) of assessing the merits of or negotiating the settlement of a claim by or against a recipient under a subagreement provided the claim arises from work within the scope of the project, a formal amendment to the loan agreement is executed specifically covering the costs before they are incurred, and the costs are not incurred to prepare documentation that should be prepared by the contractor to support a claim against the awardee.
 17. The cost associated with the preparation of the drinking water facility site before, during and, to the extent agreed on in the loan agreement, after building, including the cost of demolition of existing structures on the drinking water facility site (including rights-of-way) if building cannot be undertaken without such demolition.

18. The cost of removal, relocation or replacement of utilities, if the recipient is legally obligated to pay such costs under state or federal law.
19. The cost of restoring streets and rights-of-way to their original condition. The need for such restoration must result directly from the construction and will generally be limited to those costs of replacement of temporary and permanent paving over water main trenches.

D. Miscellaneous and Administrative Eligible Costs

Other costs necessary to plan or implement a drinking water project include, but are not limited to:

1. The costs of police traffic details during construction.
2. Preliminary and or final Plan of Operation.
3. Costs of force account work provided the owner demonstrates to the satisfaction of MassDEP that the work can be accomplished more economically by the use of the force account method, or that emergency circumstances dictate its use, and that it possesses the necessary competence required to accomplish, document, and audit such work.

III. Ineligible Costs

Ineligible Project Costs are those costs MassDEP determines are the eligible borrower's responsibility and or are not necessary for the completion of the project. MassDEP has determined that ineligible costs include, but are not limited to, the following:

1. Costs that are incurred in excess of the approved project costs shall not be eligible for a subsidy under the loan unless MassDEP has approved the increase through an amendment to the project approval certificate and the loan has been amended to include the increased amount.
2. The operational costs of drinking water projects shall be ineligible for SRF assistance.
3. Costs which are incurred in violation of applicable federal and state statutes, regulations, or requirements;
4. Bonus payments, not legally required, for completion of building before a contractual completion date.
5. Costs of basin or area wide planning which is not directly related to the project.
6. Removal, relocation or replacement of utilities located on land by privilege, such as franchise or privilege of sufferance.
7. The cost of vehicles for the transportation of the recipient's employees.
8. Items of routine "programmed" maintenance such as ordinary piping, air filters, couplings, hose, bolts, to major system components.
9. Ordinary operating expenses of the recipient including salaries and expenses of elected and appointed officials and preparation of routine financial reports and studies.
10. Personal injury compensation, claims related to wrongful deaths, or property damages arising out of the project.
11. Fines and penalties due to violations of, or failure to comply with, federal, state or local laws, regulations or procedures.

12. Costs outside the scope of the approved project, as defined in the Project Evaluation Form.
13. Costs for capacity beyond the design life of the project.
14. Costs for which payment has been or will be received from another federal or state agency.
15. The cost of drinking water projects that would provide capacity for new habitation or other establishments to be located in environmentally sensitive land such as wetland or floodplain.
16. The pro-rata portion of the costs for utilities that cannot be dedicated for the sole purpose of the drinking water project.
17. The costs of solutions to aesthetic problems, including design details which require expensive building techniques and architectural features and hardware, that are unreasonable or substantially higher in cost than approvable alternatives.
18. Preparation of applications, plans of study, and permits required by federal, state or local regulations or procedures.
19. Architectural or engineering services or other services necessary to correct defects in a comprehensive wastewater management plan, design drawings and specifications, or other subagreement documents *except meritorious contractor claims as allowed in section II, Construction Eligible Cost, #15.*
20. The costs of acquisition (including associated legal, administrative and engineering etc.) of water main rights-of-way or drinking water treatment plant sites.
21. Costs of non-technical services (legal or administrative) for development of a user charge system, or inter-municipal agreement;
22. Architectural or engineering services or other services necessary to correct defects in a Project Evaluation report, design drawings and specifications, or other subagreement documents
23. The cost (including associated legal, administrative and engineering costs) of land acquired in fee simple or by lease or easement
24. Buy-in cost to another community's water supply system.
25. Corrective Action Reports and related corrective action construction for conventional technology.

APPENDICES

1. 310 CMR 45.04 – Eligible Projects (and Non-Eligible Activities)
2. 310 CMR 45.07 – Eligible Project Costs

Appendix 1

310 CMR 45.04: Eligible Projects/Ineligible Activities

(1) Any drinking water project of an eligible borrower is eligible to receive financial assistance from the Trust pursuant to St. 1998, c. 78 and 310 CMR 45.00. The Department has determined that such eligible projects include, but are not limited to:

(a) Projects to address or prevent violations of the public health standards in 310 CMR 22.00 and the SDWA, including projects to come into or maintain compliance with MCLs and other requirements for contaminants with acute health effects (*e.g.*, the Surface Water Treatment Rule, the Total Coliform Rule, and nitrate standards) and for contaminants with chronic health effects (*e.g.*, the Lead and Copper Rule and the Disinfection Byproducts Rule), including the costs of system activities determined by the Department to constitute an effective alternative to providing treatment to come into or maintain compliance with 310 CMR 22.00 and the SDWA;

(b) Projects to replace aging infrastructure, if such projects are needed to maintain compliance or further the public health goals and requirements in 310 CMR 22.00 and the SDWA, including projects to rehabilitate or develop sources to replace contaminated sources, install or upgrade treatment or storage facilities, and install or replace transmission and distribution pipes to prevent contamination or improve water pressure to safe levels;

(c) Projects to consolidate and/or restructure a public water system (*e.g.*, to address a system with contaminated water supply or when a system is in noncompliance or lacks adequate technical, managerial and financial capability to maintain compliance);

(d) Land acquisition, but only if the Department determines that such land is integral to a project and necessary to meet or maintain compliance and further the protection of public health (*e.g.*, land needed to locate eligible treatment or distribution projects);

(e) The planning and/or design for any eligible project; and

(f) Any eligible project which uses a single contractor to design, build and/or operate the project facilities, provided the procurement and use of such contractor is authorized by law, the project conforms with the state constitutional requirements governing the use of Commonwealth funds for public purposes, and the project otherwise meets the requirements of 310 CMR 45.00. The operation and maintenance costs of such projects shall be ineligible for DWSRF assistance.

(2) Unless otherwise determined by the Department consistent with the definition of "drinking water project" in 310 CMR 45.03, the following projects and activities are not eligible to receive financial assistance pursuant to 310 CMR 45.00:

(a) The construction, rehabilitation or maintenance of dams;

- (b) The purchase of water rights, unless the water rights are owned by a public water system that is being purchased by an eligible borrower through consolidation as part of the eligible borrower's capacity development strategy;
- (c) Reservoirs, except for finished water reservoirs and those reservoirs that are part of the treatment process and are located on the treatment facility property;
- (d) Laboratory fees for monitoring;
- (e) Operation and maintenance costs;
- (f) Projects needed primarily for fire protection;
- (g) Projects for systems which the Department determines lack adequate technical, managerial and financial capability, unless the Department determines that financial assistance from the DWSRF will ensure compliance over the long term;
- (h) Projects for systems in significant noncompliance, as determined by the Department, unless the Department determines that the project will enable the system to return to compliance and that the system will maintain an adequate level of technical, managerial and financial capability to maintain compliance; and
- (i) Projects primarily intended solely to serve future growth.

Appendix 2

310 CMR 45.07: Eligible Project Costs

(1) Costs which the Department determines are necessary for the completion of the project are eligible for financing in the loan and to receive a subsidy under the loan.

(2) Costs which the Department determines are not necessary for completion of the project are ineligible for financing in the loan.

(3) Project costs incurred by an eligible borrower prior to the date of issuance of the Department's project approval certificate are not eligible for a subsidy under the loan, except as follows:

(a) project design, including preliminary engineering and a project evaluation report, project construction or related professional services may be approved by the Department prior to the issuance of a project approval certificate as project costs eligible for subsidy if:

1. The eligible borrower has submitted a written and adequately substantiated request for approval;
2. The Department's written approval is obtained before initiation of the project and award of any loan for the project; and
3. The project is included and maintains its status on the current calendar year Intended Use Plan Project Listing.

(b) The Department's prior approval of costs in accordance with 310 CMR 45.07(3)(a) does not constitute a commitment to approve financial assistance for any project. Instead, such costs will be considered eligible project costs only if a loan is made by the Trust for the project. Accordingly, an eligible borrower receiving the Department's prior approval of costs in accordance with 310 CMR 45.07(3)(a) proceeds at its own risk.

(4) Costs incurred in excess of the approved project costs are not eligible for financing by the loan unless the project approval certificate and the loan are both amended to include the cost increase.

(5) As a loan recipient, an eligible borrower shall exercise its best efforts to accomplish the work program set forth in the loan within the loan amount. Whenever a loan recipient reasonably believes that its project costs will exceed or be substantially less than the approved loan amount, it must promptly notify the Department in writing. The loan recipient must submit revised cost estimates for the project to the Department as soon thereafter as practicable. Neither the Department nor the Trust is under any obligation to approve costs in excess of the amount previously approved in the project approval certificate and loan.

(6) The final eligible project costs shall be the eligible costs approved by the Department upon completion of the project, unless audited. If such project costs are audited, the final eligible costs shall be the eligible costs approved by the Department at the completion of the audit.